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REGULATORY AUTH.

BEFORE THE TENNESSEE REGULATORY AUTHORITY 12 14  
AT NASHVILLE, TENNESSEE

OFFICE OF THE  
EXECUTIVE SECRETARY

IN RE: PETITION FOR AN )  
INVESTIGATION AND/ OR SHOW )  
CAUSE ORDER TO DETERMINE JUST ) DOCKET NO. 98-00021  
AND REASONABLENESS OF RATES )  
CHARGED BY BELL SOUTH )  
TELECOMMUNICATIONS, INC. )

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COMPLAINT OR PETITION

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The Consumer Advocate Division of the Office of the Attorney General petitions and makes complaint as follows:

1. The Consumer Advocate Division of the Office of the Attorney General is authorized by Tenn. Code Ann. § 65-4-118 to initiate or participate or intervene in proceedings to represent the interests of Tennessee consumers in accordance with the Uniform Administrative Procedures Act (UAPA).
2. The UAPA provides that contested case intervention is handled in accordance with Tenn. Code Ann. § 4-5-310.
3. The American Association of Retired Persons (AARP) is an organization representing the interests of certain Tennessee consumers. AARP has filed a Petition seeking a show cause proceeding and investigation to determine the just and reasonableness of the rates of BellSouth Telecommunications, Inc. (BellSouth).

4. Tennessee consumers have a right, a privilege and a duty to pay only just and reasonable rates.
5. BellSouth is a telecommunications utility regulated by the Tennessee Regulatory Authority (TRA) pursuant to Tenn. Code Ann. § 65-4-101.
6. Tenn. Code Ann. § 65-4-122 provides a description of the legal rights, duties and privileges of Tennessee consumers and provides in pertinent part:

**Discriminatory charges - Reasonableness of rates  
- Unreasonable preferences - Penalties.**

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(b) Any such corporation which charges, collects, or receives more than a just and reasonable rate of toll or compensation for service in this state commits extortion, which is prohibited and declared unlawful.

7. BellSouth charges, collects, or receives more than a just and reasonable rate of toll or compensation for service in this state, which is prohibited and declared unlawful.
8. Tenn. Code Ann. § 4-5-102 (3) of the Uniform Administrative Procedures Act provides that contested case means:

[A] proceeding, including a declaratory proceeding, in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing. Such proceeding may include rate making; price fixing; granting of certificates of convenience and necessity; the making, review or equalization of tax assessments; the granting or denial of licenses, permits or franchises where the licensing board is not required to grant the licenses, permits or franchises upon the payment of a fee or the finding of certain clearly defined criteria; and suspensions of, revocations of,

and refusals to renew licenses. An agency may commence a contested case at any time with respect to a matter within the agency's jurisdiction;

9. BellSouth contests AARP's Petition.

10. Tenn. Code Ann. § 65-1-203 (b) provides:

(b) All decisions of the Tennessee regulatory authority pertaining to dispositions to or from any deferred revenue account shall be made in a public meeting of the authority. The attorney general and reporter and any other interested party shall be given adequate notice of the meeting and shall be given the opportunity to present oral and written testimony. As used in this section, "deferred revenue account" means any account created for the excess earnings from utilities regulated by the Tennessee regulatory authority.

11. AARP has filed a complaint which in part requires the TRA to make a decision pertaining to dispositions to or from a deferred revenue account.

12. BellSouth is required to observe the ratemaking practices in its last order applicable to it pursuant to Tenn. Code Ann. § 65-5-201.<sup>1</sup>

13. Tenn. Code Ann. § 65-5-203(c) is applicable to BellSouth until it is validly regulated under another regulatory mechanism.

14. The Court of Appeals determined that BellSouth is not operating pursuant to a price regulation plan in BellSouth Telecommunications v. Tennessee Regulatory Authority, Opinion on Petition to Rehear, Appeal No. 01A01-9602-BC-00008<sup>2</sup>,

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<sup>1</sup>See also 65-4-101(g) (1).

<sup>2</sup>The Order also applied to Appeal No. 01A01-9602-BC-00066 and Appeal No. 01A01-9602-CH-00016.

filed November 19, 1997, p. 4. Said Order is attached hereto as Exhibit A and incorporated herein by reference.

15. Presently pending before the Tennessee Supreme Court is an Application For Permission to Appeal from the decision of the Court of Appeals in BellSouth Telecommunications v. Tennessee Regulatory Authority. During the pendency of that Application, the stay granted by the Court of Appeals remains in effect meaning that BellSouth is not operating under price regulation; however, future orders of the Tennessee Supreme Court could alter the law under which BellSouth is regulated.
16. BellSouth, in its Application for Price Regulation and the hearing arising therefrom represented that its “Current Authorized Return” was a range of 10.65 to 11.85%.
17. BellSouth pursued this position at the Tennessee Public Service Commission and at the Court of Appeals, and further that the Court of Appeals adopted the position that the “Current Authorized Return” was a range of 10.65 to 11.85% for BellSouth in BellSouth Telecommunications v. Tennessee Regulatory Authority, Appeal No. 01A01-9602-BC-00008<sup>3</sup>, filed October 1, 1997. A copy of said opinion is attached as Exhibit B.

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<sup>3</sup>The Order also applied to Appeal No. 01A01-9602-BC-00066 and Appeal No. 01A01-9602-CH-00016.

18. BellSouth upon making such assertion represented that its “Current Authorized Return” classification was controlled by Tenn. Code Ann. § 65-4-101 (g)(1) which provides:
  - (g) "Current authorized fair rate of return" means:
    - (1) For an incumbent local exchange telephone company operating pursuant to a regulatory reform plan ordered by the commission under TPSC rule 1220-4-2-.55, any return within the range contemplated by § 1220-4-2-.55 (1)(c)(1) or 1220-4-2-.55(d).
19. The Court of Appeals found that BellSouth’s “Current Authorized Return” was within a “range” which represents the proper classification for BellSouth. Tenn. Code Ann. § 65-4-101 (g)(1).
20. The Court of Appeals in BellSouth Telecommunications v. Tennessee Regulatory Authority, Appeal No. 01A01-9602-BC-00008, filed October 1, 1997, found that BellSouth made an “election to operate under this rule” and the rule to which the Court was referring is Tenn. Admin. Rule 1220-4-2-.55. The Court identified the rule in footnote 2 on page 3.
21. BellSouth having made this representation in its litigation should be estopped from alleging that the TRA can not act in conformance with the regulatory reform rule.
22. BellSouth having made this representation in its litigation should be estopped from alleging that the TRA cannot make a decision regarding the disposition of funds to or from a deferred revenue account.

23. An Order arising from Tenn. Admin. Rule 1220-4-2-.55 is the last rate case order applicable to BellSouth and that BellSouth's duties are prescribed by said rule.
24. The TRA's responsibilities and duties are prescribed by said rule.
25. Tenn. Admin. Rule 1220-4-2-.55 provides in pertinent part:
  - (1) As an alternative to traditional rate making procedures, a local exchange carrier (LEC) may elect to operate under the regulatory reform plan described below. The Commission may modify the plan in order to meet the circumstances of a particular LEC as demonstrated by the record before the agency.
    - (a) The Commission will project the carrier's earning over a forecast test period of two to four years which will be the period of the regulatory reform plan. Neither the Commission nor the carrier will initiate proceedings to adjust the carrier's earnings during the forecast except as provided herein.
    - (b) If under appropriate circumstances and the Commission so directs, allow part of projected earning in excess of the carrier's prescribed return may be placed in an interest bearing, deferred account and used to implement the technology schedule described in rules 1220-4-6-.01 through 1220-4-6-.05 or for such other purpose as the Commission directs. Interest on the deferred revenue account shall be calculated using the average monthly balance based on the beginning and ending monthly balances. The interest rate for each calendar quarter used to compute such interest shall be equal to the arithmetic mean (to the nearest one-hundredth of one percent) of the prime rate value published in the "Federal Reserve Bulletin" or in the Federal Reserve's "Selected Interest Rates" for the 4th, 3rd, and 2nd months preceding the 1st month of the calendar quarter.
    - (c) During the forecast period earnings adjustments for large LECs (70,000 or more lines ) will be made as described in this section. Other LECs may elect to operate under section (1)(c) or under (1)(d).
      1. If the carrier earns within 60 basis points of its prescribed return on capital, no earning adjustment will be made.
      2. If the carrier earns more than 460 basis points above its prescribed return, the amount in excess will be used to benefit the carrier's customers. If the carrier warns more than 460 basis points below

its prescribed return, the Commission will take appropriate action to make up the amount of the deficit.

3. If the carrier earns between 60 and 450 points above or below the carriers prescribed return, the excess or deficit will be shared with the carrier's customers on a 40-60, 45-55, or 60-40 basis depending upon the carrier's service rating level as determined by the Commission in accordance with section (1)(f).

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- (e) If, during the forecast period, changes occur which jeopardize the interest of ratepayers or the financial stability of a carrier, the Commission or the carrier may initiate rate review proceedings for prospective relief.
26. BellSouth is presently operating pursuant to Tenn. Admin. Rule 1220-4-2-.55, including but not limited to Tenn. Admin. Rule 1220-4-2-.55(c).
27. The overall rate of return, pursuant to Tenn. Admin. Rule 1220-4-2-.55, is the measure of whether the rates it charges are just and reasonable.
28. BellSouth's overall rate of return is the measure of whether the rates it charges are more than just and reasonable.
29. BellSouth's last order arising from Tenn. Admin. Rule 1220-4-2-.55 provided for a rate of return range of 10.65% to 11.85%.
30. BellSouth has exceeded that rate of return for 1996 and the twelve months ended November 1997.
31. Tenn. Admin. Rule 1220-4-2-.55 (b) provides that BellSouth's earnings in excess of the authorized range (10.65% - 11.85%) must be shared and placed in a deferred revenue account if the company is operating pursuant to such an order.
32. BellSouth is not placing such earnings in a deferred revenue account.

33. The earnings placed in a deferred revenue account inure to the benefit of Tennessee consumers and the TRA should and may utilize monies in a deferred revenue account to grant relief to Tennessee consumers.
34. Tenn. Admin. Rule 1220-4-2-.55 (e) provides that ratepayers have interests in the application of the rule and permits the agency to provide immediate relief to prevent injustice to Tennessee consumers.
35. Tenn. Code Ann. § 65-4-122(b) provides both the legislative intent and rule of construction that it is unlawful for a utility to charge, collect, or receive more than a just and reasonable rate of toll or compensation for service.
36. Tenn. Admin. Rule 1220-4-2-.55 may result in TRA adjustments of earnings and rates and requires a contested case hearing pursuant to Tenn. Code Ann. § 65-2-101 (2).
37. Rates become more than just and reasonable under Tenn. Admin. Rule 1220-4-2-.55(c) after earnings to a company exceeds 11.85% at which point benefits begin inuring to Tennessee consumers.
38. The absolute top of the sharing range for BellSouth is 15.85% (11.25% + 4.60%) rate of return and that BellSouth is exceeding that range.
39. BellSouth's rate of return on earnings for the twelve months to date 1997 through November exceeded 18% and has become more than just and reasonable in an absolute sense under Tenn. Admin. Rule 1220-4-2-.55 to the extent that its rate of return on earnings exceed 15.85%.



40. The Consumer Advocate Division estimates that approximately \$165 million should be available for disposition to the deferred revenue account from BellSouth Telecommunications, after sharing required by Tenn. Admin. Rule 1220-4-2-.55 and that said \$165 million should be available for disposition in the interests of Tennessee consumers, after sharing.
41. The interests of Tennessee consumers are harmed unjustly and unreasonably by service rates which unjustly and unreasonably high and that earnings and rates should be adjusted in accordance with Tenn. Admin. Rule 1220-4-2-.55.
42. The interests of Tennessee consumers are harmed by BellSouth's retention of funds which would reduce their rates or otherwise be applied to benefit consumers.
43. The interests of Tennessee consumers are harmed by BellSouth's more than just and reasonable charges, billings or collections of toll or compensation.
44. Consumers' financial interests are harmed when they cannot spend money on other goods and services because BellSouth's current rates unjustly and unreasonably provide an excessive rate of return.
45. Tennessee consumers are entitled to just and reasonable rates under Tenn. Admin. Rule 1220-4-2-.55 and Tenn. Code Ann. §§ 65-5-122(b); 65-5-201.

Therefore, the Consumer Advocate Division requests the TRA to:

- (1) find that BellSouth is operating pursuant to Tenn. Admin. Rule 1220-4-2-.55 and that BellSouth is estopped from denying that it is operating pursuant to that rule;

- (2) decide that BellSouth should make dispositions to the deferred revenue account;
- (3) decide that dispositions should be made from the deferred revenue account to Tennessee consumers after BellSouth makes dispositions to said deferred revenue account;
- (4) decide that existing individual rates, joint rates, tolls, fares, charges, and schedules thereof or other special rates are unjust, unreasonable, and excessive or are more than just and reasonable;
- (5) initiate a show cause proceeding to determine why it should not order BellSouth to make dispositions to the deferred revenue account in compliance with Tenn. Admin. Rule 1220-4-2-.55 and that such proceeding include, but not be limited to, ascertaining the disposition of amounts to the deferred revenue account by BellSouth and find that at least \$165 million should be available after sharing under Tenn. Admin. Rule 1220-4-2-.55;
- (6) provide relief to Tennessee consumers by disposition from the deferred revenue account pursuant to Tenn. Code Ann. § 65-1-203 (b) after BellSouth makes dispositions to that deferred revenue account in the interests of Tennessee consumers.

Respectfully Submitted,

L. Vincent Williams

## CERTIFICATE OF SERVICE

I, L. Vincent Williams, hereby certify that a copy of the foregoing Complaint or Petition was served on the following parties of record by facsimile or hand delivery and by depositing a copy of the same in the United States mail, postage prepaid, addressed to them, in accordance with the following list, this 31<sup>st</sup> day of March, 1998:

Mr. Kenneth Atkins, Esq.  
404 East College Street  
Dickson, Tennessee 37055

Mr. Guy Hicks, Esq.  
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L. Vincent Williams